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Supreme Court, U.S.
FILED

No. 07-1545 JUN 10 2008

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In The

Supreme Court of the United States

Donna Guy Watson, *pro se*
Petitioner

v.

Allen Ray Watson Respondent
and
Mark A. Smedal, Attorney of Record
and *pro se* Respondent

On Petition for A Writ of Certiorari To The Kentucky Court of Appeals

Petition for Writ of Certiorari

Donna Guy Watson. *pro se*
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QUESTIONS PRESENTED

Whether Donna Guy Watson, mother of Dennis "Denny" Allen Watson and Administratrix of his Estate, may sue in matters related to having insurance proceeds paid to his estate without enjoining his estate.

Whether the insurance proceeds from the State Farm Life Policy should have been paid to the Estate of Dennis Allen Watson rather than Allen Ray Watson, his father.

Whether Summary Judgment regarding payment of the State Farm Insurance proceeds was improperly granted in the lower court.

Whether the standard cited by the Court of Appeals to allow for an appeal of the summary judgment in the defamation case/privilege claim was met based on Mr. Smedal tacitly admitting the defamatory statements were not relevant to the determination of the case. To claim privilege the comments must be relevant.

Whether Summary Judgment granted by the lower court in the matter regarding defamation and privilege was properly granted.

Whether Petitioner's individual rights were denied by the Kentucky Courts based on the due process clause and equal protection clause in the Fourteenth Amendment of the United State Constitution.

LIST OF PARTIES

Pursuant to Rule 14.1(b), all parties appear in the caption of the case on the cover page.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari is issued to review the judgment below.

OPINIONS BELOW

The opinion of the Kentucky Court of Appeals dated **September 21, 2007**, appears at Appendix A to this Petition and is unpublished.

The various Opinions, Orders and Judgments of Louisville, KY Circuit Court, Division Eleven, (dated **06/21/06, 07/11/06**, and **03/02/05**), appear at Appendix B to this Petition and are unpublished.

JURISDICTION

The date on which the Kentucky Court of Appeals decided my case was **September 21, 2007**. A copy of the decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on **November 20, 2007**, and a copy of the order denying rehearing appears at Appendix D.

A timely petition for discretionary review was denied by the Kentucky Supreme Court on **March 12, 2008**, and a copy of the order denying discretionary reviews appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C§1257(a).

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STATEMENT OF CASE

Brief Factual Background

- Donna Guy Watson, Petitioner, and Allen "Ray" Watson, one of the Respondents, were married in 1968 and divorced in 1989,
- There were two children from the marriage: Kimberly "Kim" Watson and Dennis "Denny" Allen Watson.
- Denny worked for and with his father.
- Denny died sometime in June, 2004 (estimated June 10th).
- His body was found by Kim at his home on June 30th, 2004.
- Mr. Watson filed the insurance claim July 4th, 2004 and received settlement prior to Donna Watson being appointed administratrix of Denny's Estate.
- Donna Watson, Petitioner and Denny's mom became Administratrix of his Estate in August, 2004.
- Irregularities were found in Denny's State Farm Insurance Policy forms that dated back to 1993.

- A motion was filed in Probate to have Mr. Watson pay the proceeds to Denny's Estate due to alterations in the insurance forms.
- Mr. Smedal, attorney for Mr. Watson, filed a response to the motion that contained false information regarding Denny's personal affairs and a total character assault on Ms Watson.
- Mr. Smedal had prior knowledge that the information he presented was riddled with lies and misrepresentations about Ms Watson's character and false statements about Denny's business.
- The Probate Judge said the insurance determination would have to be made by a higher court.
- Petitioner filed a complaint in Circuit Court for the insurance proceeds to be paid to Denny's Estate and defamation of character on the part of Mr. Watson and Mr. Smedal.
- The trial court granted summary judgment on both matters to Mr. Watson and Mr. Smedal.

- An appeal was filed with the Kentucky Court of Appeals where it was decided that the insurance claim could not be brought because Petitioner failed to enjoin Denny's Estate; the summary judgment for the defamation was upheld. No determination on the insurance matter was given since the opinion ruled the Petitioner could not bring the action.

Authority to Sue

Judge Taylor's Opinion, rendered September 21, 2007, stated that Denny's Estate should be enjoined for Donna Watson, administratrix of his estate, to sue for payment of the insurance proceeds to Denny's Estate. I am the administratrix of Denny's Estate and his mom. I was present and still married to Ray Watson at the time the original State Farm Policy was purchased. In either case, *CR 17.01* allows me to bring suit as the administratrix of my son's estate and request proceeds be paid to the estate: *CR 17.01* allows me to bring suit as Denny's mom and request

proceeds be paid to his estate. The *rules for joining parties to the case* offer no exception that would negate *CR 17.01*. The court, at its discretion, could join Denny's Estate at any point in the proceeding if it felt it should be enjoined in the action *CR 21*.

The decision by the Court of Appeals denied Petitioner's right to due process guaranteed in the *14th Amendment* of the *US Constitution*. It further denied equal protection under the law guaranteed in the *14th Amendment* of the *US Constitution*. The Opinion shows a lack of understanding of the circumstances surrounding the insurance settlement, as well as other factual misunderstandings in this matter, e.g. the time when Mr. Smedal became involved, etc. The decision of the Court of Appeals disallowing the insurance case needs to be reversed.

Insurance

Sometime during an eleven week period from Denny's 21st birthday, October 27, 1992, to January, 1993, a change of ownership form was presented to

State Farm Insurance with Denny signing as new owner of the policy. Unfortunately, his name was scratched out and Allen Ray Watson's was entered. No initials or indication of any type that Denny knew of his name being removed is available and no successor/beneficiary form was presented for Denny or for Ray Watson as the "claimed new owner" of the policy. (State Farm advised Mr. Watson that a new one was necessary or the proceeds would be paid to the owner's estate.) Kentucky's insurance code clearly states that no alterations may be made to an insurance policy without the expressed consent of the owner, per *KRS 304.14.090(1)*. Absence of the consent makes Denny the owner of the policy. Absence of the successor/beneficiary form makes the Estate the beneficiary.

In an attempt to authenticate the policy change form, affidavits from the State Farm agent, Bob Blair, and Ray Watson were presented by Mark Smedal. The agent claimed that he remembered meeting with Ray and Denny, changing the form himself then signing the bottom of the form as

agent for State Farm. This violates *KRS 304.14.090(3).*

In addition to the insurance code violations, the claim made by Mr. Blair, supported by Ray Watson and presented by Mark Smedal was perjured. Another individual signed the form on the agent signature line then initialed above the line indicating the signature was by someone other than Bob Blair, *CR 56.07.* (The perjured affidavits should warrant criminal investigation because they are/were relevant to the determination of this case.)

Privilege v Defamation/Slander

In the probate action, Ray Watson presented an affidavit that was full of demonstrable lies about me. Mark Smedal presented it to the court almost verbatim in his motion. Ray Watson knew the statements were false. Mark. Smedal had first hand knowledge they were false, yet presented them anyway; hence, the defamation portion of this case. Mr. Smedal claimed "privilege" in the defamation action. He sought and received summary judgment based on "privilege" claiming the

statements were relevant to the case. Circuit Court Judge Morris, as is his discretion, must have accepted in good faith that Mr. Smedal was representing the truth when claiming privilege; he ignored evidence presented to the contrary. It is understandable since the part of the code to practice law in the state of Kentucky clearly enumerates the expectations of practicing attorneys, *SCR 3.130(4.1 and 8.3)*. Mr. Smedal intentionally presented false evidence to discredit my simple request that the insurance proceeds be paid to Denny's estate.

Judge Taylor allowed for the summary judgment to stand in the Court of Appeals decision based on the fact that it was not appealed within the time allotted. It would have been difficult to appeal in the time allotted because no notification of the order was ever mailed to Petitioner. The file was kept in the Judge's office by the bench clerk for some reason. Petitioner had been verbally advised by the bench clerk that Mr. Smedal had received summary judgment, not Mr. Watson. It is not felt that the bench clerk was trying to mislead Petitioner; she was just confused with the verbiage

used in the Motion for Summary Judgment and thought. Regardless, the way the judgment was acquired and awarded needs to be reviewed by this Court.

Based on the case cited by Judge Taylor in his COA Opinion, *Sloan v Jewell Ridge Coal Corp., 347 S.W 2d 504,506 (Ky. 1961)*, review is necessary by this Court. The summary judgment needs to be set aside due to new evidence offered by Mr. Smedal: he tacitly admits the defamatory comments were not relevant to the matters before the Probate Court, a requirement in claiming privilege per *Massengale v. Lester 403 S.W.2d 701.702; Hayes v. Rogers, 447 S.W.2d 597.598; Schmitt v. Mann 163 S.W.2d 281 and Edwards v. Kentucky Utilities Co., 158 S.W.2d.935*, cases cited by Respondent/counsel when requesting Summary Judgment. The irrelevant nature of the comments and the fact they were misrepresentations of my character requires reversal of the previous rulings.

REASONS FOR GRANTING PETITION

This Court's intervention is sought to correct the erroneous decisions of the lower courts. The lower courts did not consider:

1. The Fourteenth Amendment in the United States Constitution guarantees equal protection under the law. The decisions made in the Kentucky Court of Appeals case and in the lower court in Louisville did not offer any protection, much less equal, to my case. The lower courts ignored laws, case law and rulings that would have allowed Petitioner to present the case fairly which would have led to a different outcome in every question. The Court of Appeals decision revoked my right to sue thereby avoiding a decision on the insurance claim. This needs to be corrected.

2. Summary Judgment was incorrectly granted by Circuit Court in both the defamation case and insurance case. Kentucky law states that summary judgment cannot be granted if there are material facts in dispute. Also, summary judgment requires the Court view the decision in the light most favorable to the

non-moving party. *Publishers Press, Inc., Plaintiff, v. Technology Funding, Inc. Defendant, Civil Action No. 07-48-C, United States District Court for the Western District of Kentucky, Louisville Division, 2008 U.S. Dist. Lexis 2137, January 10, 2008, Decided.*

3. It is a perception of the public that character smashing is a common defense offered up by attorneys in an attempt to disguise weak arguments when responding to serious issues. The financial cost of doing battle against such personal attacks is out of reach for most Americans, which is why I am *pro se*. The vicious attack to my character will forever be attached to the final documents associated with my son's life. To summarily dismiss the attack based on privilege undermines justice and subverts individual rights. The damage is far beyond any dollar figure that can be awarded. Now that Mr. Smedal has owned that the statements were not relevant to the issues presented in Probate, the defamation claim deserves to be heard and/or reversed.

4. Mr. Smedal encouraged false testimony in the probate action and

in this case, a practice akin to what happened in *Sheri Berrier v. Lewis S Bizer, 1999-SC-94850DG Supreme Court of Kentucky 57 S.C.3d 271;2001 Ky.* The above case is published but the Court did not rule on the deceptive practices of defense attorney, Mark Smedal. It is time for the problem to be addressed. Such activity fattens the pockets of unethical individuals who choose to practice this type of law; clogs court dockets; and does immeasurable harm to the opposition and our justice system. Like damage done by unscrupulous prosecutors, e.g. Michael Nyphong, Mr. Smedal should be held accountable to the full extent of the law for the personal attack to my character. Perhaps it will signal the serious nature of the problem and the willingness of the Supreme Court of the United States to protect the rights of those harmed by overzealous attorneys out for easy money, quick settlements and a win at any cost.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

06/10/08
Date

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